



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Mr. Paul C. Sarahan
Attorney
Litigation Support Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-0395

Dear Mr. Sarahan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39056.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for seven categories of information related to the Alamodome in San Antonio. TNRCC has made available to the requestor all responsive information that it believes to be public information. However, you contend that some of the responsive information is excepted from required public disclosure by sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. You have submitted that information to this office for review.

Section 552.103(a) excepts from disclosure information relating to litigation to which the state is or may be a party. TNRCC has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, TNRCC must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

TNRCC initiated an enforcement action related to the Alamodome against the City of San Antonio (the "city") and VIA Metropolitan Transit Authority ("VIA") on January 26, 1996. You assert that "this pending enforcement action may be resolved through settlement, administrative hearing or trial." You have shown the relationship of the

submitted information to the enforcement proceeding. Therefore, TNRCC has met its burden under section 552.103(a).

However, once information has been obtained by all parties to the litigation, through discovery or otherwise, a section 552.103 interest no longer exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the litigation has seen or had access to the information at issue, there is no justification for withholding that information from the requestor pursuant to section 552.103. It appears that the documents we have marked were previously released to the city, VIA, or both. If TNRCC in fact released these documents to the city or VIA at any time subsequent to TNRCC's anticipation of the pending enforcement action, then TNRCC has waived its section 552.103 interest in the marked documents. Furthermore, under such circumstances, neither section 552.107 nor section 552.111 would except the marked documents from disclosure. Therefore, TNRCC may withhold all unmarked documents from disclosure pursuant to section 552.103, but TNRCC may be obliged to release the marked documents to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 39056

Enclosures: Marked documents

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